87-948

No.

Supreme Court, U.S.
FILED
OCT 28 1987
JOSEPH F. SPANIOL, JR.
CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1987

ALAN EDGAR HARRIS,

Petitioner,

v.

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

APPENDIX
TO
PETITION FOR A WRIT OF CERTIORARI

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App. 1

IN THE COURT OF APPEALS OF MARYLAND

Misc. Docket (Subtitle BV)

No. 51

September Term, 1985

ATTORNEY GRIEVANCE COMMISSION
OF MARYLAND

v.

ALAN EDGAR HARRIS

Murphy, C.J.
Eldridge
Cole
Rodowsky
Couch
McAuliffe
Adkins,
JJ.

Opinion by Couch, J.

Filed: July 30, 1987

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* Couch, J., now retired, participated in the hearing and conference of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and adoption of this opinion.

The Attorney Grievance Commission ("Commission"), acting through Bar Counsel, filed a petition seeking disciplinary action against the respondent, Alan Edgar Harris. The petition alleged that Harris violated certain disciplinary rules in his representation of three unrelated clients, Delores Green, Grady Jacks, Sr., and Anthony Jeter. Pursuant to Maryland Rule BV 9, we referred the matter to Judge Arrie W. Davis of the Circuit Court for Baltimore City. In his memorandum of findings of fact and conclusions of law, Judge Davis rejected some of the Commission's charges, but nevertheless concluded that Harris had violated the following rules of the Code of Professional Responsibility: DR 1-102(A)(1), DR 6-101 (A) (3), DR 7-101(A) (1) in his representation of Delores Green; and DR 1-102(A) (1), DR 5-103(B), DR 9-102(B) (3) in his representation of Grady Jacks,

Sr. /1 Harris has filed seventeen exceptions and Bar Counsel has filed one exception to Judge Davis's memorandum. Exceptions 16 and 17 involve two motions to dismiss the disciplinary petition. We shall first address the motions to dismiss.

I

Harris's Motions to Dismiss

Exception 16

In the first motion, argued initially before Judge Davis and now before this Court, Harris attacks in several respects proceedings of the Inquiry Panel and the Review Board. Like the trial court, we

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/1 The text of the applicable Disciplinary Rules is set forth in this opinion.

With respect to the Jeter complaint, Judge Davis found that there was no clear and convincing evidence regarding the charged violations. The Commission has not excepted to this finding and thus we shall not consider the Jeter complaint.

reject his arguments. /2

Harris argues initially that Bar Counsel improperly informed the Inquiry Panel of prior hearings and warnings issued to respondent in three other cases, and also advised the Panel that there was a "pattern of misconduct" involved. Bar Counsel's action, however, is specifically sanctioned by the Attorney Grievance Commission's Administrative and Procedural Guidelines ("Guidelines"). Section 4-203 states in part:

/2 Harris argued below that the trial court had the power to grant his motion to dismiss and to, in effect, remand the case to the Review Board for reconsideration of the charges. Judge Davis rejected this contention: "This Court ... believes that it has jurisdiction to consider the bases set forth in the Motion to Dismiss and make findings of fact as to the factual bases set forth in the Motion to Dismiss; however, within the context of the unique nature of an Attorney Grievance proceeding, it is the Court of Appeals which must determine whether or not the matters alluded to constitute sufficient grounds to dismiss the Petition." We agree with this statement.

> "Transmittal of File by Bar Counsel. Upon the appointment of a Panel, Bar Counsel shall promptly forward the file and record to the Panel Chairman and other Panel members. If Bar Counsel determines that the present complaint or complaints establish a pattern of misconduct similar to past misconduct for which sanctions or warnings have been issued to the Respondent, the file and record shall include a statement of prior sanctions imposed on the Respondent and also a statement of prior warnings issued to the Respondent. Prior sanctions include disbarments, suspensions and public and private reprimands."

We find this contention to be without merit. /3

We next consider Harris's due process contentions /4, which we summarize as

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/3 To the extent the respondent attacks section 4-203 of the Guidelines as violative of due process, our discussion infra of Maryland State Bar Association v. Frank, 272 Md. 528, 538, 325 A.2d 718, 723-24 (1974) and Bar Association of Baltimore v. Posner, 275 Md. 250, 255, 339 A.2d 657, 659-60, cert. denied, 423 U.S. 1016 (1975), will suffice to reject this contention.

/4 Harris also claims he was denied equal protection, but he has not explained his reasons for doing so. See Attorney Grievance Commission v. Brown, 308 Md. 219, 223, 517 A.2d 1111, 1112 (1986); Attorney Grievance Commission v. Cockrell, 304 Md. 379, 393, 499 A.2d 928, 935 (1985).

follows: 1) respondent was denied the opportunity to participate in the selection of the Inquiry Panel hearing the complaints against him; 2) a single Inquiry Panel improperly considered four entirely unrelated complaints against respondent, depriving him of a "fair and impartial hearing before an unbiased body, unaffected by notice or knowledge of any complaint other than the one it was initially charged to hear ..."; 3) respondent was precluded from taking part in Review Board proceedings, including the selection of participating members; and 4) the Attorney Grievance Commission improperly performed as an investigative agency, a prosecuting agency, and a "selecting agency with respect to the persons who (were) to constitute the Inquiry Panel and the Review Board...." /5

/5 Respondent does not argue that those contentions also constitute a violation of the Attorney Grievance Commission's Administrative and Procedural Guidelines.

Harris's arguments are clearly without merit. In Attorney Grievance Commission v. Stewart, 285 Md. 251, 259, 401 A.2d 1026, 1030, cert. denied, 444 U.S. 845 (1979), we said that proceedings conducted by the Inquiry Panel and the Review Board are similar to the proceedings conducted by a grand jury in criminal cases. They are investigatory in nature - designed to aid in determining whether disciplinary action is warranted - and informal to the extent that the rules of evidence need not apply. Id., 401 A.2d at 1030. See, Attorney Grievance Commission v. Brown, 308 Md. 219, 223, 517 A.2d 1111, 1113 (1986). Moreover, any irregularity in the proceedings before the Inquiry Panel and the Review Board ordinarily will not amount to a denial of due process, as long as the lawyer is given notice and an opportunity to defend in a full and fair hearing following the institution of disciplinary proceedings in this Court. Maryland State Bar Association

v. Frank, 272 Md. 528, 538, 325 A.2d 718, 723-24 (1974); Bar Association of Baltimore v. Posner, 275 Md.250, 255, 33p A.2d 657, 659-60, cert. denied, 423 U.S. 1016 (1975). See Stewart, 285 Md. at 259, 401 A.2d at 1030; Brown, 308 Md. at 223, 517 A.2d at 111.

In the instant case, Harris was afforded notice and an opportunity to defend in a full and fair hearing following the institution of disciplinary proceedings in this Court. Accordingly, his various contentions asserting a denial of due process in the Inquiry Panel and Review Board proceedings are without merit.

The reasoning of Stewart also disposes of Harris's contention that he did not receive notice before a member of the Inquiry Panel recused himself. Likewise, we reject his assertion that he should have been notified that a new Panel member would be replacing another member at the upcoming

Inquiry Panel proceedings. If Harris believed any member serving on the Panel should have been disqualified because of conflicting interests, he could have given written notice to the Panel Chairman explaining the basis of the allegation, with copies to the Chairman of the Inquiry Committee and Bar Counsel. Guidelines, [ ] [Sec.] 5-101 (b). There is nothing in the record to indicate that he took that action. Moreover, the trial court concluded, and we agree, that Harris has failed to demonstrate a conflict of interest on the part of any Panel member, or any prejudice to himself as a result of the substitution.

Finally, Harris claims the disciplinary petition charged him "with violations as to which he was not charged before the Inquiry Panel and as to which that Panel made no findings...." We reject this contention. Formal charges of misconduct do not exist

against an attorney until a petition is docketed in this Court. Attorney Grievance Commission v. Bailey, 285 Md. 631, 637, 403 A.2d 1261, 1265 (1979). As long as these charges are "sufficiently clear and specific" so as to reasonably inform the respondent what he is compelled to answer for and defend against, Md. Rule BV 9 c; Attorney Grievance Commission v. Cockrell, 270 Md. 686, 313 A.2d 816 (1974), and there are no substantive transgressions of the Commission's own Guidelines or the BV Rules, the respondent is generally precluded from contesting what occurred in the preliminary stages before the Inquiry Panel and the Review Board leading to the filing of charges in this Court. See Stewart, 285 Md. at 259, 401 A.2d at 1030. See generally Attorney Grievance Commission v. McBurney, 282 Md. 116, 122-24 & n.1, 382 A.2d 58, 62-3 & n.1 (1978).

Accordingly, the respondent's first

motion to dismiss is denied. /6

Exception 17

In his second motion to dismiss, Harris alleges that Bar Counsel had an improper ex parte communication with a member of the Inquiry Panel that was considering the complaints against respondent. He argues:

> "Bar Counsel, in a ex parte manner and without informing Respondent or ... his counsel, improperly, impermissibly and unethically attempted to affect and/or did affect the proceedings, decision and/or recommendation of said panel and/or its disposition of the matters entrusted to it herein by seeking to change and/or by persuading the panel to change its recommendation herein with respect to the respective complaints of said Delores Green and Anthony Jeter."

After a hearing, the trial court rejected Harris's contention. Harris has renewed

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/6 Although we do not decide whether Md. Rule BV 10 b is an additional basis on which to reject any of Harris's objections, we beieve it is appropriate to draw attention to that rule:

> "The hearing of charges shall not be stayed or challeneged by reason of any procedural defects alleged to have occurred prior to the filing of charges."

his motion before this Court.

In support of his contention, Harris submitted an internal memorandum from Bar Counsel's files describing the communication between Bar Counsel and the Inquiry Panel member. It reads as follows:

> TO BC Docket No. 84-247-4-2
> Green/Harris
>
> BC Docket No. 84-96-4-2
> Jeter/Harris
>
> FROM Melvin Hirshman
> Bar Counsel
>
> On July 23, 1985, I read the report of four (4) cases against this Respondent from the Inquiry Panel. The two (2) cases referred to above were reported as recommending that the Respondent be reprimanded. The transcript of their findings of May 6, 1985, indicated that they found the conduct such that he should not receive discipline but should receive a reprimand. I called Katherine Bishop, Chairman of the Panel, and went over the BV Rules to her and explained the difference to her between a warning and a reprimand. She said that she would confer with the other members of her Panel and advise me in a day or so what it was that they intended in these two (2) cases. The two (2) cases in which they recommended charges and a dismissal are not involved with the problem. Mr. Grossman

> advises me that if the Panel indicates that warnings rather than reprimands were meant, then we will appeal this matter to the Commission at its next meeting."

It is clear from this memorandum, which was written by Bar Counsel to his own files, that Harris's contention must fail. According to the memorandum, the Inquiry Panel in the Green and Jeter cases apparently recommended a disposition which was not recognized in the BV Rules. Upon reading this recommendation, Bar Counsel, by telephone, contacted the chairperson of the Panel to explain the permissible dispositions available under the Rules. The memorandum also reveals that Glenn Grossman, Assistant Bar Counsel, recommended to Bar Counsel that an appeal be filed if the Inquiry Panel sussequently indicated that "warnings rather than reprimands were meant." The record is devoid of any evidence that Bar Counsel attempted to influence the Inquiry Panel in

any way to come forward with a particular outcome. Accordingly, the respondent's second motion to dismiss is denied.

II

Complaint of Delores Green

Exceptions Nos. 1, 6, 7, 8, 13, 14

According to Judge Davis's findings, the Green complaint relates to Harris's representation of Delores Green in a civil action against Action T.V. Rental, Inc. ("Action T.V."), and one of Action TV's employees, James Alexander, for Alexander's allegedly wrongful repossession of a television set which Green was renting (with an option to purchase) from Action TV. The crux of Green's complaint, lodged with the Attorney Grievance Commission sometime in 1984, was that her case against the defendants was dismissed for lack of prosecution. A settlement between Harris, on behalf of Green, and the attorney for Action TV, John H. Doud, III, was

eventually reached in 1985. As part of the settlement, Green received $75Ø and a new television set from the defendants. In addition, Harris gave Green $6ØØ.

Based on the foregoing, the Commission charged Harris with violating the following disciplinary rules:

Disciplinary Rule 1-1Ø2

"Misconduct.

(A) A lawyer shall not:
(1) Violate a Disciplinary Rule.
(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
(5) Engage in conduct that is prejudicial to the administration of justice.
(6) Enage in any other conduct that adversely reflects on his fitness to practice law."

Disciplinary Rule 6-1Ø1

"Failing to Act Competently.

(A) A lawyer shall not:
(2) Handle a legal matter without preparation adequate in the circumstances.
(3) Neglect a legal matter entrusted to him."

Disciplinary Rule 7-1Ø1

"Representing a Client Zealously

(A) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which did not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

Judge Davis found that the case had been dismissed prior to settlement and concluded:

> "While it is true that Delores Green agreed to the settlement and may have received all to which she was entitled in her case against Action TV Rental, it is difficult to kmow with any certainty whether Green's position was compromised by virtue of the dismissal of her case. It should be noted that the Respondent did make a $600.00 contribution to the settlement of Green's case which shows that he desires to make reparations; however, the contribution may also be indicative of Respondent's belief that he was less

> than diligent in his representation of Green. As a result of the foregoing, I find that Respondent failed to represent his client zealously through reasonably available means permitted by law in violation of Disciplinary Rule 7-101(A) (1) and that Respondent neglected a legal matter entrusted to him in violation of Disciplinary Rule 6-101(A) (3)."

Judge Davis further concluded that Harris did not violate DR 1-102(A) (4), (5) and (6), DR 6-101(A) (2), and DR 7-101(A) (2) and (3).

Exception No. 1

Harris contends that Judge Davis's factual finding that "[t]he case was automatically dismissed pursuant to Judge Greenfeld' rder of March 24th, 1982" is not supported by clear and convincing evidence. In a disciplinary action, factual findings are prima facie correct and will not be disturbed on appeal unless determined to be clearly erroneous. Attorney Grievance Commission v. Gilbert, 307 Md. 481, 490, 515 A.2d 454, 458 (1986); Attorney Grievance Commission v. Kemp, 303 Md. 664, 674,

496 A.2d 672, 677 (1985) and cases cited therein. Based on our review of the record, we are unable to say that Judge Davis's finding is clearly erroneous.

Judge Greenfeld's Order of March 24, 1982, the second of two orders suspending operation of Md. Rule 530 (now Md. Rule 2- 507), provides:

> "Plaintiff's Motion to Suspend Operation of Md. Rule 530 GRANTED. Plaintiffs should not be penalized for the Court's failure to rule on Defendant's Demurrer, which was previously filed. Md. Rule 530 shall be suspended for 12 months from today's hearing. If the case is not disposed of with said 12 month period, it shall be automatically dismissed for lack of prosecution." (Emphasis added).

A docket entry on the Green file jacket, dated March 25, 1983, provides:

> "DISMISSED under Rule 530 of the Maryland Rules of Procedure for lack of prosecution. Judgment absolute in favor of the Defendant(s) for costs of suit."

Harris argues that Ms. Green's case was "still alive on the docket" when the settlement was reached between Green and

Action T.V. In support of this argument, Harris contends that the:

> "court clerk's office had erroneously issued an untimely notice of contemplated dismissal of the case under former Maryland Rule 530 before the requisite one year's time, which triggered operation of that rule, had expired. Respondent had filed a motion raising this defect. That occasioned the filing of a motion ne recipiatur by the defendant in the case. Those motions still were pending, and thus the case had not been finally dismissed, when it was settled by the respondent, Ms. Green having consented to the proposed settlement with full knowledge of all pertinent circumstances."

Judge Greenfeld's Order of March 24, 1982, suspending operation of Md. Rule 530 for one year, unequivocally provides that the case would be dismissed for lack of prosecution if the case was not disposed of within the twelve month period. Evidence of several post-dismissal pleadings and a post-dismissal settlement between the parties in the circumstances of this case does not overcome the prima facie correctness of Judge Davis's factual find-

ings. Accordingly, we find no merit to this exception.

Exception No. 6

Along the same lines, Harris contends that Judge Davis erred in reaching the following conclusion of law:

> "I find as a fact that the settlement that was reached occurred at a time when the case against Action T.V. Rental had been dismissed."

Judge Davis correctly characterized the finding as an issue of fact. For the reasons previously set forth, we find this exception to be without merit.

Exception No. 7

Exception 7 relates to Harris's contention below that the case against Action TV never reached disposition due to Harris's inability to secure a trial date. Harris argues that the trial judge erred in reaching the following conclusion of law:

> "I further find that there is no credible evidence before this Court

> to indicate that [Harris's law clerk] contacted the office of John Doud in regard to scheduling a trial date particularly in light of Doud's assertion that no contact was made with his office prior to the receipt of the May, 1983 letter sent by Respondent."

The factfinder determines the weight of the evidence, including whether to believe any witness. Attorney Grievance Commission v. Winters, ____ Md. ____, ____ A.2d ____ [Misc. No. 30, September Term, 1984, slip op. at 11 (filed June 2, 1987)] and cases cited therein. Under the clearly erroneous standard, we will not substitute our judgment for that of the trial judge. This contention is without merit.

Exception No. 8

Harris next excepts to Judge Davis's conclusion that the:

> "Respondent failed to represent his client zealously through reasonably available mans permitted by law in violation of Disciplinary Rule 7-101(A) (1) and that Respondent neglected a legal matter entrusted to him in violation of Disciplinary Rule 6-101(A) (3)."

The docket entry of March 25, 1983, reflecting the dismissal of Green's case, provides that judgment absolute was entered in favor of the defendants. It is our view that Harris violated DR 7-101(A) (1) and 6-101(A) (3) when his client's case was dismissed. Hence, we deny this exception.

Exception No. 13

Harris contends that Judge Davis erred in finding that:

> "[R]espondent's representation of Delores Green ... was characterized by a cavalier informality, impatience with his clients, and a lack of professionalism."

This finding relates to Judge Davis's conclusion that Harris did not violate subsections (3) and (4) of Disciplinary Rule 1-102. Inasmuch as Bar Counsel has not excepted to this finding and because this finding plays no part in our disposition of the other exceptions, we decline to address this contention.

Exception No. 14

Finally Harris objects to Judge Davis's conclusion that Harris violated DR 1-102(A) (1), DR 6-101(A) (3), and DR 7-101(A) (1). As we have affirmed the violations of DR 6-101(A) (3) (Exception 8, supra), and DR 7-101(A) (1) (Exception 8, supra), it follows that Harris violated DR 1-102(A) (1). Accordingly, we reject this exception.

Complaint of Grady Jacks, Sr.

Exceptions Nos. 2, 3, 4, 5
9, 10, 11, 12, 13, 15

According to Judge Davis's findings, Harris began representing Grady Jacks, Sr., in June of 1982. Over the next few years, Harris handled some 19 personal injury claims for Jacks and his family. On numerous occasions during this period, Harris gave Mr. and Mrs. Jacks certain monies: some of the sums were personal loans, some were advances against anticipated settlement of the tort claims,

and others were actual settlement monies. On September 7, 1984, Harris informed Jacks that Jacks owed him some $3,500. Jacks, who disputed the debt, requested an accounting from Harris and filed a complaint against Harris with the Attorney Grievance Commission. As a result of the complaint, Harris froze all settlement funds which he held on behalf of the Jacks family pending resolution of these proceedings.

Based on this history, the Commission charged Harris with violating the following disciplinary rules:

Disciplinary Rule 1-102

"Misconduct

(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

(2) Circumvent a Disciplinary Rule through actions of another.

(3) Engage in illegal conduct involving moral turpitude.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on his fitness to practice law."

Disciplinary Rule 5-103

"Avoiding Acquisition of Interest In Litigation.

(B) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses."

Disciplinary Rule 9-102

"Preserving the Identity of Funds and Property of a Client

(B) A lawyer shall:

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by the client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive."

Judge Davis concluded that Harris violated DR 1-102(A) (1), DR 5-103(B), and DR 9-102(B) (3), but did not violate DR 1-102(A) (2), (3), (4), (5), (6), and DR 9-102(B) (4).

Exception No. 2

In this exception, Harris contends that the trial judge erred in making the following findings of fact:

> "He filed a Demurrer on October 15, 1979 to the Civil Action brought by the Respondent."

We agree with Harris that this finding relates to the Green complaint and not the Jacks complaint. Exception 2 is sustained.

Exception 3

Harris next challenges Judge Davis's finding that Harris advanced $608.24 to Vincent Stark of Stark Realty Company for a delinquent mortgage payment. We have searched the record and find no clear and convincing evidence to support this finding. Accordingly, Exception 3 is sustained.

Exception 4

Harris argues that the trial judge erred in making the following italicized finding:

> "With respect to the failure of Respondent to give an accounting to Grady Jacks or his family for the 19 cases he handled for them, he offered a letter of February 14, 1984 as a settlement sheet for the cases referred to therein."

As we read Judge Davis's memorandum of findings of fact and conclusions of law, the challenged language is merely a recital of the claims against Harris and not a finding of fact. This exception is denied.

Exception 5

In the same vein, Harris claims that the trial judge erred in making the following "finding or conclusion:"

> "Petitioner asserts that DR 9-102(A)(2) is inapplicable to the present case, since, according to the Petitioner, Grady Jacks was not disputing the fee due Respondent; hence there was no reason to freeze the funds in Respondent's escrow account."

We perceive the quoted passage to be a summary of one of Bar Counsel's arguments

rather than a finding of fact or conclusion of law. Accordingly, this exception is without merit.

Exception 9

Exception 9 challenges the following conclusion of law:

> "The advances, as set forth hereinabove, included ... an advance of $608.24 paid to Vincent Stark for delinquent Mortgage payments."

We agree with Harris for the reasons set forth in Exception 3. Exception 9 is sustained.

Exception 10

Harris next claims that Judge Davis erred in concluding that Harris violated DR 5-103(B). As previously set forth, DR 5-103(B) prohibits a lawyer from providing financial assistance to a client while representing a client in connection with contemplated or pending litigation, except that under some circumstances a lawyer may advance or guarantee the expenses of litigation.

Judge Davis found that the monies advanced to the Jacks family from Harris included "a $3,500.00 deposit to the seller for the purchase of a house, $2400.00 for settlement on the Allendale Road property, a $332.75 advance for the purchase of a 1977 Cadillac automobile, $1500.00 for the tax and title on the automobile, ... and $750.00 for the purchase of a video machine." He further found that these sums were in no way advances for the "expenses of litigation." /7

In response to Harris's argument that the monies were not advanced in connection with contemplated or pending litigation inasmuch as it was Harris's intention to settle the cases out-of-court, Judge Davis concluded:

/7 Upon our review of the record, it appears that the $1500.00 was actually for the car and the $332.75 was for the taxes and title.

> "Respondent was authorized to enter suit at any time under the provisions of the retainer agreement executed in each case. Each agreement further contained a provision regarding the contingent fee whether recovery was effectuated by a law suit or by settlement. In fact, Respondent did file suit in 1984. Finally, an attorney would be remiss if he undertook representation of his client without being prepared, if the eventuality arose, to pursue the course to whatever end the pre-litigation negotiations required. To do less would not be to properly represent his client."

We agree with Judge Davis and deny Exception 10.

Exception 11

In this exception, Harris challenges Judge Davis's conclusion that:

> "[Harris] failed to maintain complete records of all funds, securities, and other properties of his client coming into the possession of the lawyer and to render appropriate accounts to his clients regarding them in violation of Disciplinary Rule 9-102(B) (3)."

Based on our review of the record, we cannot say that Judge Davis's conclusion was in error. Accordingly, we deny this exception.

Exception 12

Harris also challenges the trial judge's conclusion that Harris violated a disciplinary rule contrary to DR 1-102(A)(1). As we have affirmed violations of DR 5-103(B) (Exception 10, supra) and DR 9-102(B)(3) (Exception 11, supra) with respect to Harris's representation of Jacks, this exception is without merit.

Exception 13

Exception 13 is set forth in our discussion of the Green complaint, supra. For the same reasons, it is denied with regard to the Jacks complaint.

Exception 15

Finally, Harris challenges Judge Davis's conclusion that Harris violated DR 1-102(A)(1), DR 5-103(B), and DR 9-102(B)(3). We have addressed these contentions in previous exceptions and have found them to be without merit. Exception 15 is denied.

IV

Petitioner's Exception

Bar Counsel excepts to Judge Davis's failure to find a violation of Disciplinary Rule 9-102(B) (4). Judge Davis found there was no clear and convincing evidence to support the conclusion that Harris violated DR 9-102(B) (4). Based on our review of the record, we are unable to say that Judge Davis's finding is clearly erroneous. Accordingly, this exception is denied.

V

Sanction

The severity of the sanction to be imposed depends upon the facts and circumstances of each case. Attorney Grievance Commission v. Brown, 308 Md. 219, 236, 517 A.2d 1111, 1119 (1986). With respect to the charges in connection with Harris's representation of Delores Green, we have upheld Judge Davis's conclusion that Harris neglected a legal matter in violation of DR

6-101(A) (3), failed to represent his client zealously in violation of DR 7-101(A) (1), and violated a disciplinary rule in contravention of DR 1-102(A) (1). With respect to the charges in connection with Harris's representation of the Jacks family, we have upheld Judge Davis's conclusion that Harris advanced financial assistance to his client in violation of DR 5-103(B), failed to maintain complete records and render appropriate accounts in violation of DR 9-102(B) (3), and violated a disciplinary rule in contravention of DR 1-102(A) (1). The Commission seeks a nine month suspension. It cites Bar Association of Baltimore City v. Cockrell, 274 Md. 279, 334 A.2d 85 (1975).

Considering all the circumstances in this case, we conclude that the appropriate sanction to be imposed is suspension from the practice of law in this State for six months. We recognize that Harris has had

no disciplinary action taken against him since his admission to the bar in 1968. Nevertheless, the violations here are sufficiently serious to warrant suspension for this length of time. The suspension shall begin thirty days after the filing of the opinion in this case and shall continue thereafter until Harris has paid his portion of costs in this case.

IT IS SO ORDERED; RESPONDENT TO PAY TWO-THIRDS AND THE ATTORNEY GRIEVANCE COMMISSION TO PAY ONE-THIRD OF THE COSTS AS TAXED BY THE CLERK OF THIS COURT, INCLUDING THE COSTS OF ALL TRANSCRIPTS PURSUANT TO MARYLAND RULE BV15 c. FOR WHICH SUM JUDGMENT IS ENTERED IN FAVOR OF THE ATTORNEY GRIEVANCE COMMISSION AGAINST ALAN EDGAR HARRIS.

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND	:	IN THE COURT OF APPEALS
	:	OF MARYLAND
Petitioner		
	:	MISC. DOCKET (BV) 51
v.	:	SEPTEMBER TERM 1985
	:	----------
		IN THE
	:	CIRCUIT COURT FOR
ALAN EDGAR HARRIS		BALTIMORE CITY
	:	
Respondent		DP-38 NO. 51
	:	

MEMORANDUM OF FINDING OF FACT AND CONCLUSIONS OF LAW

The Petition of the Attorney Grievance Commission ("The Commission") in requesting disciplinary action against the Respondent and its answer filed thereto came on before the Circuit Court for Baltimore City on September 11, 1986 and October 14 and 16, November 20, 1986 and January 19, 1987. The testimony offered at that hearing together with the Exhibits received established a clear and convincing evidence of the following facts relevant to this controversy. On September 11, 1986,

The Commission proceeded with the complaint of Delores Green against the Respondent which grew out of the case of Green v. Action TV Rental in the Court of Common Pleas of Baltimore City. Called to testify for The Commission were John Doud, Esquire, an attorney with the firm of Fedder and Garten (who represented Action TV Rental) and the Complainant, Delores Green. Ms. Green had retained the Respondent to file suit against Action TV Rental on the basis that an employee of Action TV Rental had broken into her home to repossess a television set on behalf of the Company. The employee, Jim Alexander, allegedly pushed Ms. Green out of the way, throwing her against the door and then pushed her daughter, Veronica Wilkerson, while at the house. Ms. Green claimed her shoulder and/or back were injured when she became involved in the altercation with Mr. Alexander. Ms. Green called the police and

Alexander was apprehended. Delores Green thereafter retained the Respondent to defend her against charges of assault and battery by the employee of Action TV Rental and to assist her in her cross-complaint against Alexander. The Respondent was also retained to institute a civil case against Action TV Rental.

Delores Green asserted that she discussed her case against Action TV Rental with Respondent sometime in 1984:

> "I asked him how the case was and at the time he told me the case had been dismissed and he had to leave, he didn't have time to talk to me and he would send me papers on what happened with the case."

It was at that point that she telephoned the Attorney Grievance Commission to file her complaint. Within two weeks after advising Green that the case had been dismissed, Respondent forwarded a letter that "recorded step by step everything he had done." Ultimately, Green received a new color television set in settlement of

the case against Action TV Rental, the Complainant having made all of the payments on the original contract with the exception of the last payment. The employee of Action TV Rental had broken the original television set with a cinder block when told by police that he could not take the television set away.

John Doud testified that he filed a Demurrer on October 15, 1979 to the civil action brought by the Respondent. According to Doud, the Plaintiff's Motion to Suspend Maryland Rule 530 was granted for a period of a year in March of 1982. Doud claimed that he had no discussion with his client between the time of filing of the Demurrer and March of 1982. The case was automatically dismissed pursuant to Judge Greenfeld's Order of March 24th, 1982. When asked the reason given by Respondent as to why the dismissal of the Green matter should have been vacated, Doud

responded that Respondent had sent him a letter asserting that Respondent's law clerk had contacted Doud's office to attempt to arrange a scheduling of the trial date and that Respondent was unable to get cooperation from Doud's office or to agree upon a trial date. According to Doud, he had no recollection of any contact from Respondent's office and that he further indicated tht the file did not reflect any communication or correspondence from Respondent at any time prior to requesting cooperation in setting a trial date. Doud further testified that the case was settled for $750.000 in cash and a console television set.

Respondent avers that Green "did not suffer any detriment from Respondent's activities" by reason of her receipt of "an adequate settlement", according to Respondent's evaluation of the claim. He points to the fact that, notwithstanding

that former Rule 530 had been invoked, settlement was nevertheless accomplished. Respondent further alludes to the fact that he made a $600.00 contribution to the settlement:

> "I paid $600.00 because I have a law practice. If I try the case I still will probably wind up losing. A lawyer's time and advice are his stock and trade and Mr. Grossman I don't know whether you are aware of the cost of trying a case. If you try a case, it's going to cost you anywhere from $12,000.00 to put a jury in the box and to -- and the Court system -- I, as an attorney try to settle a case if I can. I settle a case for economic reasons."

Respondent explained that prior to March, 1982, he never contacted the Court to attempt to have a hearing on the Demurrer because the Court was "so back-logged that you could write, you could stand on your head and you could talk yourself blue in the face."

When asked whether a Motion filed by Respondent for Suspension of Maryland Rule 530 had precipitated a Motion Ne

Recipiatur, Respondent replied:

"That's correct. After I receive a Motion Ne Re then I went over and I sometime after that when I got a chance to read the Motion Ne Re I found out the case had an entry that was posted, obviously, was posted after April 25th. The case had not actually been dismissed in March. It had been written in as actual entry as having been dismissed after April 25 so it may have been sometime in May that it was dismissed. The Clerk's office obvioulsy [sic] had destroyed the notice of contemplated dismissal, which I sent to them, the March 25 entry was made.

* * * *

On the fifth day of May, 1983 I filed a Motion for Suspension of Maryland Rule 530, that was filed by May 16. What happened was I mailed Mr. Doud his copy and then it took me awhile to get over to Court and I filed, I actually filed his response to the Motion, his being dated May 13, 1983 having been filed and mine having been dated--May 16, 1983. And this file has been taken away from the Clerk's office, and the papers are not in order, there are notations on it, this one said filed late. I don't recall that ever being in the file of the Clerk's office. I think there may have been--it's been out of the custody of the Court and not in the Clerk's Office where it belongs and in possession of Mr.Grossman and it's not in proper order."

Considering the complaint of Grady Jacks, Respondent began representing the Jacks family around June 23, 1982. He filed a Demurrer on October 15, 1979 to the Civil Action brought by the Respondent. Over a period of time, Respondent handled some 19 accident cases involving the Jacks family. In each case, a retainer agreement was executed which contained a Power of Attorney authorizing Respondent to make payments from proceeds received. At various times after June 23rd, 1982, the Respondent advanced monies to William Jacks and to Grady and Mrs. Jacks. Advances had been made to the Jacks family including a $3,500.00 deposit to the seller, $2,400.00 for settlement on the Allendale Road Property, a $332.75 advance for the purchase of a 1977 Cadillac automobile, $1,500.00 for the tax and title on the automobile and an advance of $608.24 paid to Vincent Stark of Stark Realty Company for delinquent

Mortgage payments for the months of April and May, 1984. Jacks also obtained $750.00 from Respondent to purchase a video machine. Jacks estimated that the loans received from Respondent totalled approximately $8,000.00 to $9,000.00.

When asked when he first demanded an accounting, Jacks respondent [sic] "shortly after Mr. Harris was with my first case in 1982 with The Mayor and City Council v. Diamond Cab Company." At a later point in the proceedings, Jacks asserted that he could not say how much Respondent owed him currently because he "would need to know (myself) what each case was worth." He estimated that the total of all of the cases would have come to $35,000.00. Jacks, on cross-examination, acknowledged that he "may have" told the panel that $16,000.00 was the amount owed him by the Respondent. Jacks later conceded that a letter dated February 14 from the Respon-

dent referring to a check in the amount of $3792.62 represented the difference between the $14,150.00 proceeds and "total amount of indebtedness to my office and me, personally."

Respondent takes the position that monies paid to Mr. Jacks and members of his family were paid against P.I.P. sums received. Respondent principally argues, however, that the loans made to the Jacks family were not made while he represented the Jacks family in connection with "contemplated or pending litigation."

With respect to the failure of Respondent to give an accounting to Grady Jacks or his family for the 19 cases that he handled for them, he offered a letter of February 14, 1984 as the settlement sheet for the cases referenced therein. Additionally, Respondent asserted that he reviewed with Jacks and his family certain ledger cards

containing information regarding the cases he was handling.

Petitioner asserts that DR9-102(A)(2) is inapplicable to the present case, since, according to Petitioner, Grady Jacks was not disputing the fee due Respondent; hence there was no reason to freeze the funds in Respondent's escrow account. Finally, regarding the claim of Grady Jacks, Respondent asserts that his client authorized a payment of a fee of $1252.57 notwithstanding that the initial retainer agreement with Mr. Jacks called for the payment of a fee of $1,066.67, representing one third of the $3,200.00 recovery.

With respect to the claim of Anthony Jeter growing out of his action against Chong Nim Lee, the Petitioner asserts that Respondent has violated the Disciplinary Rules by reason of an alleged failure to file answers to interrogatories for a period in excess of one year and a further

failure to have the case placed on the trial docket until October 19, 1984. Service of process had been effectuated on Lee December 3, 1980. Respondent received the answers to interrogatories from Anthony Jeter on August 1st and 2nd, 1982. The time to respond to the interrogatories had been extended pursuant to Respondent's request. Respondent had written to Counsel for the Defendant advising of certain difficulties in representing Jeter because the latter was at the time incarcerated. On July 13, 1983, Respondent forwarded unexecuted answers to the interrogatories to counsel for the Defendant. In September of 1983, the answers were filed. In support of its allegations, The Commission alludes to Respondent's representation to counsel for the Defendant that he would have to meet with Jeter's Counselor, but Respondent failed to follow through and visit his client's Counselor. Penultimately, Petitioner

asserts Respondent's failure to place the case on the trial docket was the result of neglect rther than a tactical decision. Respondent had submitted that the decision to defer proceeding in the case was bottomed on the consideration that Jeter's ability to recover would be hampered by knowledge of his status as a prisoner during a trial.

The Commission cites the fact that Respondent failed to make mention of his strategy of not going forward in his answer wherein he indicated that the Plaintiff would be present pursuant to a Writ of Habeas Corpus "if there is a trial date assigned to this case... ." Petitioner further alludes to a letter from Respondent to Jeter in which Respondent suggested there would be a break in his case load and he would be able to "give some attention to [your] case."

CONCLUSIONS OF LAW

Respondent relies primarily on the fact that Delores Green agreed to and received a settlement in her case against Action TV Rental in conjunction with his assertion that Green herself had brandished a pair of scissors giving rise to the criminal action against her which had to be defended. I find as a fact that the settlement that was reached occurred at a time when the case against Action TV Rental had been dismissed. I further find that there is no credible evidence before this Court to indicate that Jonathan Resnick contacted the office of John Doud in regard to scheduling a trial date particularly in light of Doud's assertion that no contact was made with his office prior to the receipt of the May, 1983 letter sent by Respondent.

While it is true that Delores Green agreed to the settlement and may have received all to which she was entitled in her

case against Action TV Rental, it is difficult to know with any certainty whether Green's position was compromised by virtue of the dismissal of her case. It should be noted that the Respondent did make a $600.00 contribution to the settlement of Green's case which shows that he desired to make reparations; however, the contribution may also be indicative of Respondent's belief that he was less than diligent in his representation of Green. As a result of the aforegoing [sic], I find that Respondent failed to represent his client zealously through reasonably available means permitted by law in violation of Disciplinary Rule 7-101 (A) (1) and that Respondent neglected a legal matter entrusted to him in violation of Disciplinary Rule 6-101 (A) (3).

In answer to the allegation that Respondent improperly advanced monies or guaranteed financial assistance to Grady Jacks,

he contends: (1) that the monies paid to Grady Jacks and his family were advances against P.I.P. proceeds; and (2) that the loans made to the Jacks family were not made in connection with cases where there was "contemplated or pending litigation."

Considering the last contention first, there is without question clear and convincing evidence that the monies advanced were for sums far in excess and wholly unrelated to the Personal Injury Protection proceeds received. DR 5-103 (B) provides:

> "While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that a lawyer may advance or guarantee the expenses of litigation, including Court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses."

There had been testimony that monies were paid for transportation for the Jacks

family to and from Respondent's office and to other places in connection with the cases in which Respondent represented them. The advances, as set forth hereinbefore, included a $3,500.00 deposit to the seller for the purchase of a house, $2400.00 for settlement on the Allendale Road property, a $332.75 advance for the purchase of a 1977 Cadillac automobile, $1500.00 for the tax and title on the automobile, an advance of $608.24 paid to Vincent Stark for delinquent Mortgage payments, and $750.00 for the purchase of a video machine. It is clear that those sums were in no way advanced for the "expenses of litigation" as the purposes are clearly set forth. Additionally, Respondent was authorized to enter suit at any time under the provisions of the retainer agreement executed in each case. Each agreement further contained a provision regarding the contingent fee whether recovery was

effectuated by a law suit or by settlement. In fact, Respondent did file suit in 1984. Finally, an attorney would be remiss if he undertook representation of his client without being prepared, if the eventuality arose, to pursue the cause to whatever end the pre-litigation negotiations required. To do less would be not to properly represent his client.

Concerning the allegation that Respondent failed to make a proper accounting to Grady Jacks, he asserts that (1) a letter dated February 14, 1984 served as a settlement sheet for the cases referenced therein (2) a ledger sheet prepared by Melville Harris, Respondent's father, was reviewed with the client; (3) and that many of his records had been submitted to the Circuit Court No. 2 in connection with his divorce suit, Frances Harris v. Alan Edgar Harris.

At the outset, it is axiomatic that it

is preferable for a private practioner to use a settlement sheet in which the amount of the proceeds received as well as all itemized expenses are set forth thereon. Such a settlement sheet would have avoided the dispute as to whether or not Grady Jacks and his family had received all to which they were entitled. More specifically, however, the disbursement contained on Respondent's ledger sheet was incomplete. The $332.75 "personal loan" paid to Grady Jacks for Johnnies' auto sales was not contained thereon. Additionally, certain sums of money were retained in Respondent's escrow account on behalf of the Jacks family, notwithstanding that Respondent averred that he did not owe Jacks any additional funds.

The letter of February 14, 1984 was limited in scope and did not detail disbursements for medical care and other expenses in connection with the cases

involved. From the aforegoing [sic], there is clear and convincing evidence that Respondent, while representing a client in connection with contemplated or pending litigation, advanced or guaranteed financial assistance to his client in violation of Disciplinary Rule 5-103 (B) and that said advances were not to cover the expenses of litigation, Court costs, expenses of investigation or medical examination for presentation of evidence. There is further clear and convincing evidence that the Respondent has failed to maintain complete records of all funds, securities, and properties of his client coming into the possession of the lawyer and to render appropriate accounts to his clients regarding them — in violation of Disciplinary Rule 9-102 (B) (3). See Attorney Grievance Commission v. Engerman, 289 Md. 330, 424 A.2d 362 (1981) and Attorney Grievance Commission v. Cockrell, 274 Md. 279, 334 A.2d 85 (1975)

for discussion of advancing financial assistance beyond the expenses of litigation. See also Attorney Grievance Commission v.Kemp, 303 Md. 664, 496 A.2d 672 (1985) for discussion of failure to maintain complete records of client's property.

Considering the allegation that Respondent failed to promptly pay over funds belonging to his client, Respondent contends that he failed to do so because there was a dispute as to the amount owed and Respondent was further consumed by the divorce proceedings initiated against him by his wife. While the asserted dispute was primarily the result of Respondent's practices, this Court cannot say that the evidence is clear and convincing that Respondent failed to promptly pay or deliver to his client as requested by the client funds, securities or other properties in the possession of the lawyer

as required by Disciplinary Rule 9-101 (B) (4). Neither is this Court satisfied that the evidence is clear and convincing that, with respect to the case of Grady Jacks, Respondent's practices constitute illegal conduct involving moral turpitude, that Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, or that the conduct complained of is prejudicial to the administration of justice as proscribed by Disciplinary Rule 1-101 (A) (3), (4), and (5).

There is, however, clear and convincing evidence that Respondent did violate a Disciplinary Rule in violation of DR 1-101 (A) (1).

Anthony Jeter appeared and was questioned briefly at a hearing before this Court on September 11, 1986, but complained of a severe headache and asked to be excused. On succeeding occasions, various excuses were presented by Mr. Jeter as to why he was

unable to appear before this Court to present testimony regarding his case. This Court therefore has before it principally the record of the civil case, Jeter v. Chong Nim Lee, et al., Case #20397 in the Baltimore City Court of Common Pleas, exhibits submitted by Petitioner and the testimony of Respondent. In response to the allegations contained in the Petition for Disciplinary Action, Respondent contends that he advised Jeter that appearing before a jury while incarcerated (requiring that he be accompanied at trial by a prison guard) could affect the outcome of his case. This Court having reviewed the record of the proceedings in Jeter v. Chong Nim Lee as well as the records submitted by The Commission regarding Jeter's complaint, I conclude that the evidence is not clear and convincing regarding Respondent's violation of DR 1-102 (A) (1) (6), DR 6-101 (A) (3) or DR 7-101 (A) (1), (2) and (3).

While this Court does not believe that Respondent did all that he could in pursuing the claim on behalf of Mr. Jeter, particularly regarding the Interrogatories that were to be answered, the void created by Anthony Jeter's reluctance to testify or his physical incapacity as well as the reasonableness of Counsel's advice not to proceed at a time when Jeter would have to appear in front of a jury when he was obviously incarcerated precludes this Court from finding that Respondent acted contrary to the best interest of his client.

In conclusion, although this Court does not find that there has been presented clear and convincing evidence of dishonesty, fraud, deceit, misrepresentation or moral turpitude, Respondent's representation of Delores Green and Grady Jacks was characterized by a cavalier informality, impatience with his clients, and a lack of professionalism. Respondent was, no doubt,

distracted from his professional responsibilities by his divorce case, but used this as an excuse in his dealings with his clients. The same lack of zeal and diligence extant in the Green and Jacks cases is indicated in the Jeter case notwithstanding that the evidence presented does not, in the Court's view, rise to the level requisite in Disciplinary proceedings.

From the aforegoing [sic], I find as follows: as to the complaint of Delores Green, Respondent violated DR 1-102 (A) (1), DR 6-101 (A) (3), DR 7-101 (A) (1). I find that Respondent did not violate DR 1-102 (4) (5) and (6), DR 6-202 (A) (2), DR 7-101 (A) (2) (3). As to the complaint of Grady Jacks, Respondent violated DR 1-102 (A) (1), DR 5-103 (B), DR9-102 (B) (3). I find that Respondent did not violate DR 1-102 (A) (2), (3), (4) (5), (6), DR 9-102 (B) (4). As to the claim of Anthony Jeter, while the evidence presented indicates a

lack of diligence by Respondent, I do not find that the evidence is clear and convincing that the Respondent violated Disciplinary Rules 1-102 (A) (1) and (6), 6-101 (A) (3) and 7-101 (A) (1) (2) and (3).

ARRIE W. DAVIS, JUDGE

February 11, 1987

cc: Benjamin Lipsitz
Counsel for Respondent

Glenn M. Grossman
Assistant Bar Counsel
Attorney Grievance Commission
of Maryland

COURT OF APPEALS
OF MARYLAND

* * * * *

July 30, 1987

Glenn Grossman, Esquire
Attorney Grievance Commission
Fourth Floor, District Court Building
Annapolis, Maryland 21401

Re: Attorney Grievance Commission
of Maryland v. Alan Edgar Harris
Misc. Docket (Subtitle BV) No. 51
September Term, 1985

Dear Mr. Grossman:

Please find enclosed a copy of the opinion and Order of the Court of Appeals filed today in the above entitled matter.

Very truly yours,

/s/ Alexander L. Cummings
/t/ Alexander L. Cummings,
Clerk

ALC/fmw

Enclosure

cc: The Honorable Arrie E. Davis
Benjamin Lipsitz, Esquire
Alan Edgar Harris, Esquire

COURT OF APPEALS
OF MARYLAND

* * * * *

September 9, 1987

Benjamin Lipsitz, Esquire
Suite 102
Baltimore Federal South Building
6609 Reisterstown Road
Baltimore, Maryland 21215

Re: Attorney Grievance Commission
of Maryland v. Alan Edgar Harris
Misc. Docket (Subtitle BV) No. 51
September Term, 1985

Dear Mr. Lipsitz:

In reference to the Motion for Reconsideration which you filed on behalf of the respondent in the above-captioned case, please be advised that on September 8, 1987, the Court denied the Motion for Reconsideration.

Very truly yours,

/s/ Alexander L. Cummings
/t/ Alexander L. Cummings,
Clerk

ALC:fmw

Glenn Grossman, Esquire